

REMARKS

Claims 1, 2, 4, 6, 7, 12, 14-20 have been amended. Claim 21 has been added.

The Examiner has rejected applicants' claims 17 and 20 under 35 USC 101 because the claimed invention is directed to non-statutory subject matter since the program is merely a set of instructions not embodied on a computer readable medium to realize the computer program functionality. Applicants have amended applicants' claims 17 and 20 to recite a "computer-readable storage medium storing a program for causing a computer to execute an image extracting method..." Applicants' amended claims 17 and 20 are now directed to a program embodied on a computer readable medium. Thus, applicants believe that amended claims 17 and 20 are now directed to statutory subject matter in compliance with 35 USC 101. The Examiner's rejection is therefore respectfully traversed.

The Examiner has rejected applicants' claims 1-20 under 35 USC 102(e) as being anticipated by the Atkins, et al. (US Patent No. 7,148,990) patent. Applicants have amended applicants' independent claims 1 and 16-20, and with respect to these claims, as amended, and their respective dependent claims, the Examiner's rejections are respectfully traversed.

Applicants' independent claim 1 has been amended to recite an image extracting method of extracting images from a plurality of images, comprising: a setting step of setting a number of images to be extracted from the plurality of images according to a user operation; a recognition step of recognizing evaluations for the plurality of images, the evaluations being set by a user, and an extraction step of extracting the set number of the images from the plurality of images based on the recognized evaluations. Applicants' independent claims 16 and 17 have been similarly amended.

Applicants' independent claim 18 has been amended to recite an image extracting method of extracting images from a plurality of images, comprising: a setting step of setting a number of images to be extracted from the plurality of images; a recognition step of recognizing evaluations for the plurality of images, the evaluations being set by a user; and an extracting step of extracting the set number of the images from the plurality of images in descending order of the recognized evaluations. Applicants' independent claims 19 and 20 have been similarly amended.

The constructions recited in applicants' amended independent claims 1 and 16-20 are not taught or suggested by the cited art of record. In particular, there is no teaching or suggestion in the Atkins, et al. patent of recognizing evaluations for the plurality of images, the evaluations being set by a user, and extracting the set number of the images from the plurality of images based on recognized evaluations or extracting the set number of images from the plurality of images in descending order of the recognized evaluations. Specifically, the Atkins, et al. patent discloses a method of producing a set of images as a photobook in which an operation (204) selects a set of images from a plurality of images provided from any desired source based on an input by a user, and retrieves the selected set of images from the memory for inclusion in the photobook. Col. 4, lines 26-40; FIG. 2A. The method of Atkins, et al. also ascertains an attribute value associated with each image in the selected set of images, e.g. brightness level of each image, and enhances the images in the selected set such that they have uniform attributes. Col. 4, lines 41-54. The selected enhanced images are then organized in the photobook according to any criterion selected by either the method or a user, such as according to data associated with the images. Col. 5, lines 25-33.

Thus, the Atkins, et al. patent merely discloses that the set of images is retrieved, or extracted, from a plurality of images based on an input from the user, and that the extracted images can then be organized in a photobook according to any selected criterion. The general teaching in Atkins, et al. that the images are extracted based on an input from the user is not equivalent to extracting of the set number of images based on recognized evaluations, which are set by the user, as recited in applicants' amended independent claims 1, 16 and 17. Therefore, there is no teaching or suggestion in Atkins, et al. of extracting the set number of images based on the evaluations that are set by the user and are recognized by the device. Moreover, there is no mention in the Atkins, et al. patent of extracting of the images in any particular order, and thus there is no, and cannot be any, teaching or suggestion in Atkins, et al. of extracting the set number of images in a descending order of the recognized evaluations, as recited in applicants' amended independent claims 18-20.

Accordingly, applicants' amended independent claims 1, 16 and 17, each of which recites recognizing evaluations for the plurality of images, the evaluations being set by a user and extracting the set number of images from the plurality of images based on the recognized evaluations, and applicants' amended independent claims 18-20, each of which recites recognizing evaluations for the plurality of images, the evaluations being set by a user and extracting the set number of images from the plurality of images in descending order of recognized evaluations, and their respective dependent claims, patentably distinguish over the Atkins, et al. patent.

In view of the above, it is submitted that applicants' claims, as amended, patentably distinguish over the cited art of record. Accordingly, reconsideration of the claims is respectfully requested.

If the Examiner believes that an interview would expedite consideration of this Amendment or of the application, a request is made that the Examiner telephone applicants' counsel at (212) 790-9286.

Dated: October 5, 2007

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Respectfully submitted,



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